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APPELLANT PRO SE:

JAMES H. HIGGASON, JR.
Westville, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JAMES H. HIGGASON, JR.,

Appellant-Plaintiff,

VS.

INDIANA DEPARTMENT OF CORRECTION,

Appellee-Defendant.

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No. 46A05-0611-CV-667

APPEAL FROM THE LAPORTE SUPERIOR COURT
The Honorable Paul J. Baldoni, Judge
Cause No. 46D03-0610-CT-360

June 8, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-plaintiff James Higgason, Jr., appeals the trial court's dismissal of his action against appellee-defendant Indiana Department of Correction (DOC). Specifically, Higgason argues that Indiana Code section 34-58-2-1¹ is unconstitutional. Concluding that there was no error, we affirm the trial court's dismissal of Higgason's action.

FACTS

On October 17, 2006, Higgason, an inmate at the Westville Correctional Unit (WCU) in LaPorte County, filed a complaint against the DOC for actions by its employees that allegedly impeded his access to the courts. Specifically, Higgason alleged that the WCU officials "denied him of his state credited entitlement to a sufficient quantity of free photocopies of his court pleadings to comply with the rules of court for filing." Appellant's App. p. 7. Additionally, Higgason asserted that the WCU officials' actions, which he alleges included the use of physical force on three occasions, were in retaliation for "the prolific amount of litigation that he generates."² Id. at 11.

In response to the complaint, the trial court entered the following order on October 20, 2006:

Pursuant to Indiana Code 34-58-1-1, et al., the Court now orders this claim docketed and has conducted a review as required by Indiana Code 34-58-1-2.

¹ Indiana Code section 34-58-2-1 provides:

If an offender has filed at least three (3) civil actions in which a state court has dismissed the action or a claim under IC 34-58-1-2, the offender may not file a new complaint or petition unless a court determines that the offender is in immediate danger of serious bodily injury (as defined in IC 35-41-1-25).

² As we have previously noted, Higgason is no stranger to the trial and appellate processes. A recent opinion from our court indicates that Higgason has instituted nearly 120 actions during his thirty-one years of imprisonment. See Higgason v. Ind. Dep't of Corr., 864 N.E.2d 1133, 1135 n.1 (Ind. Ct. App. 2007).

Upon reviewing the plaintiff's claim, the Court now finds as follows:

1. On Octo [sic] 17, 2006, the plaintiff submitted his claim.
2. By this Court's order, the plaintiff, James H. Higgason, Jr., pursuant to Indiana Code 34-58-2-1 has had three cases dismissed under Indiana Code 34-58-1-2 and may not file a new petition unless the Court determines that the plaintiff/offender is in immediate danger of serious bodily injury as defined by Indiana Code 35-41-1-25.
3. Plaintiff's claim consists of approximately thirty pages. Pages 7, 8 & 9 purport to satisfy the test of eminent [sic] danger of serious bodily injury. However, the claims made on those pages by the plaintiff are not persuasive for the reason that the allegations of excessive physical force do not provide dates in order for the Court to evaluate these contentions. Furthermore, plaintiff's summary of events appear to relate action of a necessary nature taken regarding Mr. Higgason's classification as a maximum security inmate. In summary, the allegations of injury wholly fail to establish that he is in "immediate danger of serious bodily injury" as defined by Indiana Code 35-41-1-25.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED pursuant to Indiana Code 34-58-2-1 that the plaintiff may not proceed and this matter is now dismissed, with prejudice.

Appellant's App. p. 1. Higgason now appeals.

DISCUSSION AND DECISION³

Higgason argues that the trial court erred in dismissing his complaint pursuant to Indiana Code section 34-58-2-1 because the statute is unconstitutional. A panel of our court recently addressed this argument by Higgason and concluded that Indiana Code section 34-58-2-1 "does not unreasonably deny offenders the right of access to the courts, but offers a

³ On May 9, 2007, the Indiana Attorney General filed a notice of non-involvement and a motion to correct the record, arguing that "[t]here was no service of process on the [DOC] (or any other defendant), and prior to service of process, Higgason's civil case was dismissed at the screening stage of the proceedings pursuant to

balance between an offender's right to bring a civil action and the heavy burden that those claims have placed on our judicial system." Higgason, 864 N.E.2d at 1137. We adopt the Higgason panel's analysis and conclusion and, therefore, affirm the trial court's dismissal of Higgason's action.

The trial court's dismissal of the action is affirmed.

FRIEDLANDER, J., and CRONE, J., concur.

Indiana Code §§ 34-58-1-1 and -2" We acknowledge the Attorney General's noninvolvement and grant its motion to correct the record on appeal to reflect such.